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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.R., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.R.,

Defendant and Appellant.

E049408

(Super.Ct.No. J222789)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.

Schneider, Jr., Judge. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and
Appellant.

Ruth E. Stringer, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel,
for Plaintiff and Respondent.

Appellant J.R. (father) appeals from the juvenile court's "exit order" (Welf. & Inst. Code, § 362.4)¹ dismissing dependency jurisdiction over his son, C.R. (child), and granting sole legal and physical custody of child to child's mother (mother). Father argues the juvenile court abused its discretion when it ordered that he have no visitation with child. As discussed below, we conclude that the court did not abuse its discretion because: 1) father's parole conditions did not at that time allow for him to have any contact with children, including child; and 2) father can apply to the family law court for visitation when and if his parole conditions change.

SUMMARY OF FACTS AND PROCEDURE

The Riverside County Department of Public Social Services (DPSS) received two referrals in July 2007 alleging that mother and her boyfriend were using methamphetamine, engaging in domestic violence, and neglecting and physically abusing the children in the home. After the second referral, child and his half-siblings were taken into protective custody after police found drugs in mother's home. Father was incarcerated at that time.² Father and mother were married when child was born, but later divorced or separated. Family law orders in San Bernardino County granted father and mother joint legal and physical custody of child, with primary residence with mother. Father told the social worker that he paid child support and that, before he was

¹ All further section references are to the Welfare and Institutions Code, unless otherwise indicated.

² The record does not contain any information about father's criminal convictions, other than that he is a registered sex offender. Father stated that he had been in prison since August 2006 for parole violations, and expected to be released in August 2007.

incarcerated, child spent more time with him than with mother. Mother told the social worker that father had been in and out of jail for years, that he did not have much of a relationship with child, and that father did not contribute to child's support.

Detention

DPSS filed a section 300 petition alleging failure to protect under subdivision (b) because of mother's history of drug use and domestic violence and father's failure to provide for child, and no provision for support under subdivision (g), again because father was not providing for child. The juvenile court ordered child to be detained. The child and his half-siblings were placed with relatives in San Bernardino County in October 2007. Mother and her boyfriend moved to Kentucky and then to San Bernardino County. Father's parole officer told the social worker that father "is a registered sex offender. He is prohibited to go near schools, parks, and other places where children are." The parole officer stated that father could visit with child, but that it would have to be closely monitored and father would have to contact the parole officer "when visits start and another contact when visits end."

Jurisdiction/Disposition

At the jurisdiction and disposition hearing held on December 19, 2007, the juvenile court took jurisdiction over child, ordered him removed from mother's custody, and ordered mother and father to participate in reunification services. Shortly after disposition, child was placed with a paternal aunt and uncle in central California, separately from his half-siblings.

Six-Month Review

Father participated in services upon his release from custody. He completed a parenting program, participated in individual counseling, and visited with child.

However, father violated his parole by visiting with child and was sent back to prison.³

At the six-month review hearing held on July 17, 2008, the juvenile court ordered six more months of reunification services to all parties and transferred the matter to San Bernardino County, where mother and her boyfriend were then residing.

Twelve-Month Review

At the 12-month review hearing held on December 15, 2008, the juvenile court terminated father's reunification services and visitation. At that time, child was beginning to transition back into mother's home, and the court also authorized San Bernardino Children and Family Services (CFS) to place child with mother under family maintenance services by approval packet.

Further Review and Challenged Order

At a further review hearing held on April 7, 2009, the juvenile court again approved placing child with mother under family maintenance. It also authorized CFS to dismiss the matter by approval packet.

³ The record does not reflect the circumstances under which father violated his parole, given that father's parole officer initially told the social worker that father could visit with child if closely monitored. However, the status review report dated June 16, 2008, reflects that the parole violations "include unauthorized visitation with his son . . . , leaving his county of residence to visit with his child and attending functions where children were present."

On July 20, 2009, CFS submitted an approval packet asking the juvenile court to dismiss the case and to make family law orders. CFS asked that the family law orders grant mother sole legal and physical custody and that father not be provided with visitation.

At the special hearing held on August 13, 2008, father asked that the family law order provide for visits if and when the “no contact” order that was a condition of his parole were to be lifted. This would allow father to begin visits immediately after the parole condition was lifted, without need for further action by the family law court. The juvenile court stated that it saw no prejudice to father by granting the orders requested by CFS. This is because father could apply to family law court for the requested orders once his parole condition was lifted, “instead of us trying to predict what the stage will be like then.” The court then dismissed the dependency case with family law orders granting mother sole legal and physical custody and denying father any visitation. This appeal followed.

DISCUSSION

Father argues the juvenile court abused its discretion when it failed to even consider whether an order providing for visits between father and child was in child’s best interest.

Section 362.4 provides that: “When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, and . . . an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue a protective

order as provided for in Section 213.5 or as defined in Section 6218 of the Family Code, and an order determining the custody of, or visitation with, the child.” In making exit orders, the juvenile court must make an informed decision as to the best interests of the child. (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) We “review the juvenile court’s decision to terminate dependency jurisdiction and to issue a custody (or ‘exit’) order pursuant to section 362.4 for abuse of discretion [citation]” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

As set forth above, father contends the juvenile court abused its discretion because it did not consider whether the order he requested, granting visitation once father’s parole conditions could be changed to allow it, would be in child’s best interest. We disagree. Because of the unusual circumstances, whether child’s best interest would be served by granting visitation to father was at that time not yet at issue. This is because, even if the juvenile court granted visitation, father would not be able to visit with child because of his parole conditions. We simply see no abuse of discretion when the trial court declined to conduct a “best interest” analysis based on a set of facts (parole conditions that allowed father to have contact with child) that did not yet exist, and in fact might not ever exist. Further, father was not prejudiced by any error because he can certainly apply to the family law court to change the visitation order when and if his parole conditions allow it. To conclude, father did not establish that the juvenile court abused its discretion when it declined to grant him visitation in its exit orders because: 1) father’s parole conditions did not at that time allow for visitation; and 2) father can apply to the family law court for visitation when and if his parole conditions change to allow visitation.

DISPOSITION

The juvenile court's exit order, entered pursuant to section 362.4, is affirmed.

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RAMIREZ
P.J.

We concur:

HOLLENHORST
J.

KING
J.